

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE:

KIM DOWNS,

Debtor.

KIM DOWNS,

Appellant,

v.

FEDERAL NATIONAL MORTGAGE
ASSOCIATION,

Appellee.

Case No. 14-cv-3-JPG

MEMORANDUM AND ORDER

This matter comes before the Court on appellant Kim Downs' motion for leave to proceed on this appeal *in forma pauperis* without prepayment of the \$298 filing fee required by 28 U.S.C. § 1930(b) and (c) (Doc. 10). A federal court may permit an indigent party to proceed without pre-payment of fees. 28 U.S.C. § 1915(a)(1). Nevertheless, a court can deny a qualified plaintiff leave to file *in forma pauperis* or can dismiss a case if the party's allegation of poverty is untrue or if the action is clearly frivolous or malicious or fails to state a claim. 28 U.S.C. § 1915(e)(2). The test for determining if an action is frivolous or without merit is whether the plaintiff can make a rational argument on the law or facts in support of the claim. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *Corgain v. Miller*, 708 F.2d 1241, 1247 (7th Cir. 1983). An action fails to state a claim if it does not plead "enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). When assessing a petition to proceed *in forma pauperis*, a district court should inquire into the merits of the petitioner's claims, and if the court finds them to be frivolous, it should deny leave to proceed *in forma pauperis*. *Lucien v.*

Roegner, 682 F.2d 625, 626 (7th Cir. 1982).

Downs' affidavit shows that she is indigent. While the Court has serious doubts about the merits of Downs' appeal, it cannot say at this time that the appeal is frivolous or malicious.

Accordingly, the Court **GRANTS** the motion for leave to proceed *in forma pauperis* (Doc. 10).

However, the Court **WARNS** Downs that should it become apparent that the appeal is frivolous or malicious at any time in the future, it may dismiss the case pursuant to 28 U.S.C.

§ 1915(e)(2)(B)(i).

IT IS SO ORDERED.

DATED: December 22, 2014

s/J. Phil Gilbert

**J. PHIL GILBERT
DISTRICT JUDGE**